

Adopted	Rejected
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COMMITTEE REPORT

YES:	13
NO:	0

MR. SPEAKER:

*Your Committee on Public Health, to which was referred House Bill 1812, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 12-15-14-2 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) Payment of
- 4 nursing facility services shall be determined in accordance with 42
- 5 U.S.C. 1396a(a)(13)(A).
- 6 (b) The office may ~~not~~ require a provider to submit non-Medicaid
- 7 revenue information in the provider's annual historical financial report.
- 8 Non-Medicaid revenue information obtained by Medicaid auditors in
- 9 the course of their audits may ~~not~~ be used for public reporting
- 10 purposes.
- 11 (c) The office may only request complete balance sheet data that
- 12 applies directly to the provider's facility. ~~Complete balance sheet data~~
- 13 ~~acquired by the office under this subsection:~~
- 14 (1) ~~is confidential; and~~
- 15 (2) ~~may only be disclosed:~~

- 1 ~~(A) in the aggregate; or~~
 2 ~~(B) for an individual facility;~~
 3 ~~if the office removes all non-Medicaid data;~~

4 (d) The office of the secretary shall adopt rules under IC 4-22-2 to
 5 implement the reimbursement system required by this section.

6 SECTION 2. IC 16-18-2-201.5 IS ADDED TO THE INDIANA
 7 CODE AS A NEW SECTION TO READ AS FOLLOWS
 8 [EFFECTIVE JULY 1, 1999]: **Sec. 201.5. "Licensee", for purposes**
 9 **of IC 16-28-5, has the meaning set forth in IC 16-28-5-0.5.**

10 SECTION 3. IC 16-28-4-1 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. A person who
 12 believes that this article or ~~rules~~ **a rule** adopted under this article ~~have~~
 13 **has** been breached may file an allegation of breach with the state
 14 department. The allegation ~~must~~ **may** be **made orally or** in writing.
 15 ~~unless the breach complained of is an offense or a deficiency. The~~
 16 **state department shall reduce** an oral allegation of breach ~~shall be~~
 17 ~~reduced to writing. by the state department.~~

18 SECTION 4. IC 16-28-4-2 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. The division shall
 20 promptly investigate ~~the following:~~

- 21 ~~(1) A written~~ **each** allegation of breach received under this
 22 chapter.
 23 ~~(2) An oral allegation of breach that the director, in the director's~~
 24 ~~discretion, believes to have merit.~~

25 SECTION 5. IC 16-28-5-0.5 IS ADDED TO THE INDIANA CODE
 26 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 27 1, 1999]: **Sec. 0.5. As used in this chapter, "licensee" means a**
 28 **person who holds a valid license issued under IC 16-28-2.**

29 SECTION 6. IC 16-28-5-1 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. The executive board
 31 shall adopt rules under IC 4-22-2 to ~~classify each rule adopted by the~~
 32 ~~executive board to govern a health facility under this article~~ **define**
 33 **each level of breach as provided in subdivisions (1) through (4).**
 34 **The state survey inspectors shall, under this article and with the**
 35 **concurrence of the director, classify a breach into one (1) of the**
 36 following categories:

- 37 ~~(1) An offense, which presents a substantial probability that death~~
 38 ~~or a life-threatening condition will result.~~ **Level 4 - immediate**

jeopardy to patient health or safety (as described in 42 CFR 488.404).

(2) A deficiency, which presents an immediate or a direct, serious adverse effect on the health, safety, security, rights, or welfare of a patient: Level 3 - actual harm (as described in 42 CFR 488.404).

(3) A noncompliance, which presents an indirect threat to the health, safety, security, rights, or welfare of a patient: Level 2 - no actual harm with potential for more than minimal harm (as described in 42 CFR 488.404).

(4) A nonconformance, which is any other classified breach not covered by subdivision (1), (2), or (3): Level 1 - no actual harm with potential for minimal harm (as described in 42 CFR 488.404).

SECTION 7. IC 16-28-5-4.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4.1. (a) Except as provided by section 4.2 of this chapter, the commissioner shall enter orders for all of the following for a level 4 breach of this article:

(1) An order for immediate correction.

(2) An order imposing a fine of:

(A) not less than ten thousand dollars (\$10,000); and

(B) not more than twenty thousand dollars (\$20,000).

(3) Suspension of new admissions to the health facility until the state department determines through an onsite inspection of the health facility that the breach has been corrected.

(4) Issuance of a probationary license.

(b) In addition to the mandatory orders under subsection (a), the commissioner may enter orders for one (1) or more of the following:

(1) An order imposing a fine of not more than five thousand dollars (\$5,000) per day for each day of continued breach after the health facility is notified of the breach until the state department determines through an onsite inspection of the health facility that the breach has been corrected.

(2) At the expense of the health facility, one (1) or more of the following:

(A) Placing a monitor in the health facility under

1 **IC 16-28-7.**

2 **(B) Requesting the attorney general to petition a court to**
 3 **place the health facility in receivership under IC 16-28-8.**

4 **(c) If the licensee does not correct the breach after the issuance**
 5 **of orders under subsections (a) and (b), the commissioner may**
 6 **revoke the licensee's license.**

7 SECTION 8. IC 16-28-5-4.2 IS ADDED TO THE INDIANA CODE
 8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 9 1, 1999]: **Sec. 4.2. (a) The commissioner shall enter orders for all of**
 10 **the following for a level 4 breach of this article that occurs within**
 11 **fifteen (15) months after a previous level 4 breach:**

12 **(1) An order for immediate correction.**

13 **(2) An order imposing a fine of:**

14 **(A) not less than twenty thousand dollars (\$20,000); and**

15 **(B) not more than forty thousand dollars (\$40,000).**

16 **(3) Suspension of new admissions to the health facility until**
 17 **the state department determines through an onsite inspection**
 18 **of the health facility that the breach has been corrected.**

19 **(4) Issuance of a probationary license.**

20 **(b) In addition to the mandatory orders under subsection (a),**
 21 **the commissioner may enter orders for one (1) or more of the**
 22 **following:**

23 **(1) An order imposing a fine of not more than five thousand**
 24 **dollars (\$5,000) per day for each day of continued breach**
 25 **after the health facility is notified of the breach until the state**
 26 **department determines through an onsite inspection of the**
 27 **health facility that the breach has been corrected.**

28 **(2) At the expense of the health facility, one (1) or more of the**
 29 **following:**

30 **(A) Placing a monitor in the health facility under**
 31 **IC 16-28-7.**

32 **(B) Requesting the attorney general to petition a court to**
 33 **place the health facility in receivership under IC 16-28-8.**

34 **(c) If the licensee does not correct the breach after the issuance**
 35 **of orders under subsections (a) and (b), the commissioner may**
 36 **revoke the licensee's license.**

37 SECTION 9. IC 16-28-5-4.3 IS ADDED TO THE INDIANA CODE
 38 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

1, 1999]: **Sec. 4.3. (a) Except as provided by section 4.4 of this chapter, the commissioner shall enter orders for all of the following for a level 3 breach of this article:**

(1) An order for immediate correction.

(2) An order imposing a fine of:

(A) not less than five thousand dollars (\$5,000); and

(B) not more than ten thousand dollars (\$10,000).

(b) In addition to the mandatory orders under subsection (a), the commissioner may enter orders for one (1) or more of the following:

(1) Issuance of a probationary license.

(2) An order imposing a fine of not more than three thousand dollars (\$3,000) per day for each day of continued breach. A fine under this subdivision may not be imposed until at least forty-eight (48) hours after the health facility is notified of the breach by the state department and may continue until the state department determines through an onsite inspection of the health facility that the breach has been corrected.

(3) Suspension of new admissions to the health facility until the state department determines through an onsite inspection of the health facility that the breach has been corrected.

(4) At the expense of the health facility, one (1) or more of the following:

(A) Placing a monitor in the health facility under IC 16-28-7.

(B) Requesting the attorney general to petition a court to place the health facility in receivership under IC 16-28-8.

SECTION 10. IC 16-28-5-4.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4.4. (a) The commissioner shall enter orders for all of the following for a level 3 breach of this article that occurs within fifteen (15) months after a previous level 3 breach:

(1) An order for immediate correction.

(2) An order imposing a fine of:

(A) not less than ten thousand dollars (\$10,000); and

(B) not more than twenty thousand dollars (\$20,000).

(3) Issuance of a probationary license.

(b) In addition to the mandatory orders under subsection (a), the commissioner may enter orders for one (1) or more of the following:

(1) An order imposing a fine of not more than three thousand dollars (\$3,000) per day for each day of continued breach after the health facility is notified of the breach until the state department determines through an onsite inspection of the health facility that the breach has been corrected.

(2) Suspension of new admissions to the health facility until the state department determines through an onsite inspection of the health facility that the breach has been corrected.

(3) At the expense of the health facility, one (1) or more of the following:

(A) Placing a monitor in the health facility under IC 16-28-7.

(B) Requesting the attorney general to petition a court to place the health facility in receivership under IC 16-28-8.

(c) If the licensee does not correct the breach after the issuance of orders under subsections (a) and (b), the commissioner may revoke the licensee's license.

SECTION 11. IC 16-28-5-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4.5. (a) Except as provided by section 4.6 of this chapter, the commissioner shall enter orders for all of the following for a level 2 breach of this article:

(1) An order for immediate correction.

(2) An order imposing a fine of:

(A) not less than one thousand dollars (\$1,000); and

(B) not more than five thousand dollars (\$5,000).

(b) In addition to the mandatory orders under subsection (a), the commissioner may enter an order suspending new admissions to the health facility until the state department determines through an onsite inspection of the health facility that the breach has been corrected.

SECTION 12. IC 16-28-5-4.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4.6. (a) The commissioner shall enter orders for all of the following for a level 2 breach of this

1 article that occurs within fifteen (15) months after a previous level
2 **2 breach:**

3 (1) An order for immediate correction.

4 (2) An order imposing a fine of:

5 (A) not less than five thousand dollars (\$5,000); and

6 (B) not more than ten thousand dollars (\$10,000).

7 (b) In addition to the mandatory orders under subsection (a),
8 the commissioner may enter orders for one (1) or more of the
9 following:

10 (1) An order imposing a fine of not more than one thousand
11 dollars (\$1,000) per day for each day of continued breach
12 after the health facility is notified of the breach, until the state
13 department determines through an onsite inspection of the
14 health facility that the breach has been corrected.

15 (2) An order suspending new admissions to the health facility
16 until the state department determines through an onsite
17 inspection of the health facility that the breach has been
18 corrected.

19 SECTION 13. IC 16-28-5-4.7 IS ADDED TO THE INDIANA
20 CODE AS A NEW SECTION TO READ AS FOLLOWS
21 [EFFECTIVE JULY 1, 1999]: **Sec. 4.7. (a) Except as provided by**
22 **section 4.8 of this chapter, the commissioner shall order the health**
23 **facility to comply with a plan of correction approved or directed**
24 **under section 7 of this chapter for a level 1 breach of this article.**

25 (b) In addition to the mandatory order under subsection (a), the
26 commissioner may enter an order suspending new admissions to
27 the health facility until the state department determines through an
28 onsite inspection of the health facility that the breach has been
29 corrected.

30 SECTION 14. IC 16-28-5-4.8 IS ADDED TO THE INDIANA
31 CODE AS A NEW SECTION TO READ AS FOLLOWS
32 [EFFECTIVE JULY 1, 1999]: **Sec. 4.8. (a) The commissioner shall**
33 **order the health facility to comply with a plan of correction**
34 **approved or directed under section 7 of this chapter for a level 1**
35 **breach of this article that occurs within fifteen (15) months after a**
36 **previous level 1 breach.**

37 (b) In addition to the mandatory order under subsection (a), the
38 commissioner may enter an order for one (1) or more of the

1 following:

2 (1) Imposition of a fine of not more than one thousand dollars
3 (\$1,000).

4 (2) An order suspending new admissions to the health facility
5 until the state department determines through an onsite
6 inspection of the health facility that the breach has been
7 corrected.

8 SECTION 15. IC 16-28-5-4.9 IS ADDED TO THE INDIANA
9 CODE AS A NEW SECTION TO READ AS FOLLOWS
10 [EFFECTIVE JULY 1, 1999]: **Sec. 4.9. The commissioner, with the**
11 **concurrence of a licensed physician, shall enter the following**
12 **against a health facility for an omission of care or an act that does**
13 **not fall within a rule:**

14 (1) For an omission of care or an act that the health facility
15 should reasonably have known would present a substantial
16 probability that death or a life threatening condition would
17 result, the orders under section 4.1 of this chapter.

18 (2) For an omission of care or an act that the health facility
19 should reasonably have known would result in an immediate
20 or a direct, serious adverse effect on the health, safety,
21 security, rights, or welfare of a patient, the orders under
22 section 4.3 of this chapter.

23 SECTION 16. IC 16-28-5-5 IS AMENDED TO READ AS
24 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. (a) In determining
25 appropriate remedies or waivers under ~~section 4~~ **sections 4.1 through**
26 **4.9** of this chapter **(or IC 16-28-5-4 before its repeal)**, the
27 commissioner shall consider the following:

28 (1) Whether the breach occurred for reasons outside of the health
29 facility's control.

30 (2) Whether the health facility has demonstrated that the health
31 facility has taken the appropriate steps to reasonably ensure that
32 the breach will not recur.

33 (3) The history of breaches by the health facility.

34 (4) The effect of the breach on the patient,

35 (b) ~~If the health facility furnishes sufficient relevant financial~~
36 ~~information, the commissioner may consider the following in~~
37 ~~determining appropriate remedies or waivers under section 5 of this~~
38 ~~chapter:~~

(1) Whether any financial savings or benefit accrued to the health facility as a result of the breach.

(2) The cost incurred by the health facility in correcting the breach.

including the actual or potential physical or psychosocial harm.

(5) The history of breaches by other health facilities:

(A) owned by the same person who owns the health facility; or

(B) operated by the same person who operates the health facility.

(6) The number of patients actually or potentially affected by the breach.

SECTION 17. IC 16-28-5-5.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 5.3. (a) Nothing in this chapter limits the authority of the commissioner to impose a fine or suspend new admissions to a health facility for each omission of care or act or repeat of an omission or act.**

(b) The commissioner may renew an order suspending admissions issued under this chapter for successive periods. However, the suspension of new admissions to a health facility under a renewed order may not exceed ninety (90) consecutive days.

SECTION 18. IC 16-28-5-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 5.5. If:**

(1) the state department:

(A) imposes a fine; or

(B) assesses costs for:

(i) placing a monitor in the health facility under IC 16-28-7; or

(ii) requesting the attorney general to petition a court to place the health facility in receivership under IC 16-28-8;

against a health facility under this article; and

(2) the health facility is unable for any reason to pay all of the fine or costs;

the state department shall impose the unpaid balance of the fine or

costs upon the person that holds the license for the health facility.

SECTION 19. IC 16-28-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. An order for immediate correction under ~~section 4(b)(1)~~ **sections 4.1 through 4.9** of this chapter shall state a specific date by which the correction shall be made. The date shall be set by the commissioner according to the circumstances of the breach but may not exceed five (5) days from the time the health facility receives written notification from the commissioner.

SECTION 20. IC 16-28-5-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 11. (a) The state department shall develop a form for reporting the determination of a breach at a health facility and any orders imposed for the breach. The state department may periodically revise these forms.**

(b) The state department and the long term care ombudsman office established under IC 12-10-13-7 shall develop a uniform letter for providing notice to a health facility patient and the legal representative of a health facility patient of a determination of a level 4 or a level 3 breach at the health facility and any orders imposed for the breach. The state department and the long term care ombudsman office may periodically revise these letters.

(c) Upon imposing an order for a breach at a health facility, the state department shall:

(1) complete one (1) of the forms developed under subsection (a); and

(2) provide a copy of the completed form to the health facility.

(d) In addition to the requirement of subsection (c), if the state department imposes an order for a level 4 or a level 3 breach at a health facility, the state department shall:

(1) complete one (1) of the letters developed under subsection (b); and

(2) provide a copy of the completed letter to the health facility.

SECTION 21. IC 16-28-5-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 12. (a) A health facility that is found to have committed a breach of this article or a rule adopted under this article shall:**

1 **(1) post on all doors providing entrance to and exit from the**
 2 **health facility; and**

3 **(2) send to all newspapers in:**

4 **(A) the county in which the health facility is located; and**

5 **(B) the counties contiguous to the county in which the**
 6 **health facility is located;**

7 **the notice of the breach and the orders imposed by the state**
 8 **department issued under section 11(c) of this chapter.**

9 **(b) In addition to the notice required under subsection (a), a**
 10 **health facility that is found to have committed a level 4 or a level**
 11 **3 breach of this article shall send to each patient and the legal**
 12 **representative of each patient a copy of the letter of notification**
 13 **regarding the nature of the breach and the orders entered by the**
 14 **state department issued under section 11(d) of this chapter.**

15 **(c) The health facility shall bear the cost of duplicating and**
 16 **sending the notices and letters required under this section.**

17 SECTION 22. IC 16-28-5-13 IS ADDED TO THE INDIANA
 18 CODE AS A NEW SECTION TO READ AS FOLLOWS
 19 [EFFECTIVE JULY 1, 1999]: **Sec. 13. The state department may**
 20 **adopt rules to implement this chapter.**

21 SECTION 23. IC 16-28-5-4 IS REPEALED [EFFECTIVE JULY 1,
 22 1999].

(Reference is to HB 1812 as introduced.)

and when so amended that said bill do pass.

Representative Brown C